

DEVELOPMENT CODE

ARTICLE 151.31 **AMENDMENTS**

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Section 151.31.001 **Amendments**

The Council may from time to time, upon recommendation of the Commission, amend, supplement, change or repeal the regulations, restrictions and district boundaries herein established. All amendments to this Code and the Zoning District Map shall be consistent with the adopted General Plan, as amended, and shall be a reflection of the City's land use planning goals. Requests to amend this Code may be initiated by the Council or the Commission on their own motions, or by petition from property owners as hereinafter set forth.

Section 151.31.002 **Type of Amendments; Initiation of Same**

- A. Text Amendment. The application for an amendment to the text of this Code shall state in particular the article, section, subsection, and paragraph sought to be amended. The application for amendment shall contain the language of the proposed amendment and shall recite the reasons for the proposed change in the text.
- B. Map Amendment. An application which seeks to change or modify the zoning classification imposed upon a particular piece of property by the district map.
- C. The initiation of a change to the text and/or Zoning District Map may be accomplished by one of the following methods:

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1. A majority of the property owners in the area of proposed change or their authorized agents; or
2. A majority vote of the Council; or
3. A majority vote of the Commission.

Section 151.31.003

Application for Amendment

- A. Application Form for Text Amendment. Application for amendment of the text of this Code shall be made to the City on a standard form provided for this purpose. The application shall include:
1. The applicant's name, address, and interest in the amendment; and
 2. The language of the proposed amendment to the Code; and
 3. Statements in support of the application, including a list of the present conditions justifying the proposed amendment.
- B. Application for Zoning District Map Amendment. An application for an amendment to the Zoning District Map shall be made to the City and include:
1. The name and address of all owners of the property for which a change is sought, together with proof of ownership. Proof of ownership shall consist of a copy of a title report issued not more than 30 days prior to the date of the application by a title company authorized to conduct business in the State of Arizona.

In the event that the application includes other property in addition to that owned by the applicant, there shall be filed by the applicant, a petition in favor of the request signed by the real property owners representing at least 75 percent of the land area to be included in the application. Such petition shall be filed and checked for authenticity of ownership before the application is accepted by the City. Proof of ownership shall consist of a copy of a title report as required above.

In the event that the application includes properties owned by more than one owner, the City shall notify, by certified mail, all property owners as listed on the County Assessor's records

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included in the area proposed to be changed by the application. Such notice shall be postmarked not later than 15 days prior to any Commission public hearing on the application.

2. Where the applicant represents another person, firm, partnership or corporation, the proof of agency, including a list of every real party in interest, whether a beneficiary of a trust or otherwise, shall be provided to the City.
 - a. If the land is owned by a corporation, proof of agency shall consist of a corporate resolution designating the individual to act as an agent. The corporate resolution must be certified by the secretary of the corporation and authenticated by the corporate seal, or acknowledged in the form prescribed by A.R.S. Section 33-506.
 - b. If the land is owned by a partnership, proof of agency shall consist of a written document of the partner(s) designating an individual to act as agent. The document must be certified and acknowledged in the form prescribed by A.R.S. § 33-506. If the land is owned by an individual, proof of agency shall consist of a written document designating an individual to act as agent. The document must be certified and acknowledged in the form prescribed by A.R.S. §33-506.
3. The proposed amendment to the district classification or boundary.
4. A map drawn to scale showing the existing and proposed district boundaries and an accurate legal description of the area being proposed for the amendment. If the legal description of the property is less than the entirety of the lot, block or parcel described in a recorded subdivision, a legal description and map shall be prepared and certified by a registered surveyor licensed by the State of Arizona.
5. A vicinity ownership map drawn to scale showing all parcels in the vicinity adjacent to and surrounding the property proposed to be changed within a radius of 500 feet of the exterior boundaries of the property.
6. Two sets of a typed, printed, or electronic list containing the names and mailing addresses of the owners of parcels within a radius of 500 feet of the exterior boundaries and identified by the same number as on the vicinity ownership map obtained from the County's real property tax records. One set shall be printed on mailing labels. Correct zip codes must be shown for each address.
7. Statements reflecting the present conditions justifying the proposed amendment; statements showing that the parcel fulfills the criteria for establishment of the proposed zoning district or, in

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the absence of the ability to comply, statements as to why the presumption against the rezoning should be overcome; and any other factors or reasons in support of the proposed amendments.

8. A neighborhood meeting shall be required for all Zoning District Map amendments. Neighborhood meetings are to be held subsequent to the submission of the application form, but no later than seven days prior to the Commission public hearing. The applicant is responsible for organizing, scheduling, and supplying all materials for the neighborhood meeting. The applicant will provide the City with information on the meeting date, time, location, and purpose of the meeting. The applicant shall also provide a copy of the letter sent to the adjacent property owners notifying them of the meeting, and a written summary of the meeting to the City.
9. A completed Development Impact Questionnaire stating the impacts that the map amendment will have on the community.

Section 151.31.004

Notice of Public Hearing

All applications for text and map amendments shall be considered by the Commission and the Council at public hearings advertised in accordance this Section.

- A. Public Notice Requirements: Notice of the time, date, and place of the public hearing, including a general explanation of the text or map amendment will be given at least 15 days before the hearing in the following manner:
 1. Each notice of public hearing for text or map amendments shall be published at least once in a newspaper of general circulation published and posted at locations identified as posting areas by the City Clerk.
 2. Notice of the time, date and place of the hearing on Zoning District Map amendments shall be posted on the affected property. A posted notice shall be printed so that the following are visible from a distance of 100 feet: the word "zoning," the present district classification, the proposed zoning district classification and the date and time of the hearing.
 3. Notice of the time, date and place of the hearing for a text or map amendment shall be mailed by certified mail to the owner and applicant or his agent.

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4. Notice of the time, date and place of hearings on Zoning District Map Amendments shall be sent to all owners of property within 500 feet of the exterior boundaries of the property. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Code for notice. In addition to persons whom receive notice as required by the matter under the consideration, the City may provide notice to others if it has reason to believe that they are affected or otherwise represent an interest that may be affected by the proposed development.
5. In proceedings involving Zoning District Map Amendments for land that abuts other municipalities or un-incorporated areas of the County or a combination thereof, copies of the notice of public hearing shall be sent to the planning agency of such governmental unit controlling such abutting land.
6. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided in the manner prescribed in paragraph 7 of this Section:
 - a. A 10 percent or more increase or decrease in the number of square feet or units that may be developed.
 - b. A 10 percent or more increase or reduction in the allowable height of buildings.
 - c. An increase or reduction in the allowable number of stories of buildings.
 - d. A 10 percent or more increase or decrease in setback or open space requirements.
 - e. An increase or reduction in permitted uses.
7. In proceedings governed by this Section, the City shall provide notice to real property owners pursuant to at least one of the following notification procedures 15 days before the hearing in the following manner:
 - a. Notice shall be sent by first class mail to each real property owner, as shown on the last assessment from the County Assessor's records, whose real property is directly governed by the changes.
 - b. The City shall include notice of such changes with utility bills or other mailings.

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- c. The City shall publish such changes prior to the first hearing on such changes in a newspaper or general circulation in the City. The changes shall be published in a display ad covering not less than 1/8 of full page.
8. If notice is provided pursuant to Subsections (b) or (c) of Paragraph 7, the City shall also send notice by first-class mail to persons who register their names and addresses with the City as being interested in receiving such notice.
9. Notwithstanding the notice requirements set forth in Subsection A of this Section, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.

Section 151.31.005

Public Hearing of Applications

Every application for amendment of this Code shall be considered by the Commission and Council at a public hearing.

- A. Burden of Proof. The burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal, the greater is the burden upon the proponent. The proposal must be supported by proof that it conforms to the applicable elements of the General Plan and to applicable provisions of this Code, especially the specific criteria set forth for the particular type of decision under consideration.
- B. Order of Proceedings.
 1. The presiding officer will state the case and call the public hearing to order. The presiding officer may establish the time allowed for the presentation of information.
 2. Any objections or jurisdictional grounds shall be noted in the record.
 3. Any abstentions or disqualification shall be determined. Members shall announce all conflicts of interest.
 4. Presentation of staff report. City staff may also present additional information, whenever allowed by the presiding officer, during the proceedings.

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5. The Commission and Council may view the area in dispute for purposes of evaluating the proposal, but shall state the place, time, manner, and circumstances of such viewing in the record.
6. Presentation of information by the applicant or those representing the applicant.
7. Presentation of evidence or inquiries by those persons who support the proposal.
8. Presentation of evidence or inquiries by those persons who oppose the proposal.
9. Presentation of evidence or inquiries by those persons who do not necessarily support or oppose the proposal.
10. Rebuttal testimony may be presented by persons who have testified supporting or opposing the proposed change. The scope of material presented during rebuttal shall be limited to matters that were brought up during the course of the hearing. Rebuttal shall be first presented by the applicant or his representative and then by those opposed to the proposed change. The presiding officer shall limit rebuttal to avoid repetition and redundancy.
11. At the close of presentation of information, rebuttal, and written argument, the presiding officer shall declare that the hearing is closed unless there is a motion to continue the public hearing. Additional written argument may be permitted at the discretion of the Commission and Council.
12. Once a hearing has been closed, it shall be reopened only upon a majority vote of the Commission and Council and only after a reasonable showing that:
 - a. There is evidence which was not reasonably available at the time of the hearing; and
 - b. The evidence is now available to the person seeking to reopen the hearing; and
 - c. The evidence is factual, substantial, and material. If the hearing is closed, no further evidence shall be received except in response to specific questions directed to staff or one of the parties to clarify earlier evidence. The opportunity for brief rebuttal shall also be afforded to adverse parties.

C. Rules of Procedure.

1. Formal rules of evidence shall not apply.

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2. Written exhibits, visual aids, affidavits, maps, and the like may be submitted as part of the evidence. Any correspondence presented to or received by any member of the Commission and/or Council, or by any other City agency or official outside the public hearing, may be received as argument and placed in the record, but will not be considered as part of the information, except that correspondence received prior to the closing of the public hearing shall be included as part of the information in that hearing. Unless the Commission or Council specifically allows later filing of argument, no correspondence received after the close of the hearing will be considered as argument.
 3. All information received by the Commission and Council shall be retained and preserved and shall be sent to an appellate body in the event an appeal is filed in accordance with *Section 151.31.006*. True, certified, or recorded copies of original information may be substituted for original documents.
 4. All evidence and argument shall be as brief as possible, consistent with full presentation.
 5. Redundancy shall be avoided.
 6. Each person presenting information or argument shall be permitted to complete his presentation without interruption, except by the presiding officer, to enforce this Code.
 7. Discussion of personalities shall be avoided to the extent possible in making a complete presentation.
 8. No person present shall engage in applause, cheers, or other vocal or outward expressions of approval or disapproval, agreement or disagreement. If any person persists in such conduct after warning by the presiding officer, such person may be expelled from the hearing.
 9. The presiding officer has complete authority to enforce these provisions to assure that a fair hearing is held, including the authority to expel from the public hearing and to bar from further appearance at the public hearing any person who willfully violates any one or more of these provisions.
- D. Considerations. Following the hearing, the Commission and Council shall consider and make a recommendation, taking into account:
1. The testimony at the hearing;
 2. A site inspection of the property in question;

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3. The recommendations from interested official bodies.
4. That a map amendment request has addressed:
 - a. The need and justification for the change; and,
 - b. The consistency of the amendment with the goals and objectives of the General Plan; and
 - c. Whether the proposed amendment benefits the general public welfare and does not constitute a granting of special privileges to an individual.
5. That a text amendment:
 - a. Demonstrates the need and justification for the change; and,
 - b. Demonstrates the relationship of the proposed amendment to the City's General Plan with appropriate consideration as to whether the proposed change will further the purposes of this Code and other City ordinances and regulations; and
 - c. Benefits the general public welfare and does not constitute a granting of special privileges to an individual owner.

Section 151.31.006

Appeal from Denial of Amendment

In the event that the request for amendment is denied by the Commission, the applicant may, within seven days from the date of the Commission hearing, file an appeal to the Council. Upon receipt of such an appeal, the Council shall arrange to hold a public hearing upon due notice and posting as heretofore specified.

Section 151.31.007

Protests Against Amendments

If the owners of 20 percent or more, (1) either of the area of lots included in a proposed change or (2) of those immediately adjacent in the rear or any side extending 150 feet, or (3) of those directly opposite extending 150 feet from the street frontage of the opposite lots, file a written protest against a proposed

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amendment, it shall not become effective except by the favorable vote of 3/4 of all members of the Council. If any members of the Council are unable to vote on such a question because of a conflict of interest, then, the required number of votes for passage of the question shall be 3/4 of the remaining membership of the Council, provided that such required number of votes for passage shall, in no event, be less than a majority (4) of the full membership of the Council.

Section 151.31.008

Reconsideration of Denied Zoning District Map Amendments

In the event that an application for a Zoning District Map Amendment is denied by the Council or is withdrawn after the Commission hearing, the Commission shall not reconsider the application nor consider another application for the same map amendment of this Code as it applies to the same property described in the original application, or any part thereof, for a period of not less than one year from the date of such denial action.

Section 151.31.009

Fees

A filing fee shall accompany each application for amendment to the map or text of this Code, and no part of such fee shall be refundable. Such fees shall be determined according to a schedule established by resolution of the Council and posted in the office of the City Clerk. In addition, the applicant must pay all required publishing costs associated with the appeal.

Section 151.31.010

Zoning District Map Amendment Conditioned Upon Site Plan Approval

The City Council may approve a Zoning District Map Amendment conditional upon a schedule for development of the specific use or uses for which the change is requested. Applicants requesting change under this Section shall submit, for consideration by the Commission and Council, a statement of the use or uses for which the change is requested, a specific schedule for development detailing the commencement and completion dates of the development of the proposed use and a site plan, prepared in accordance with the provisions of this Code, detailing the development plan for the proposed use. The submitted items will be considered by the Commission and Council at public hearings in accordance with the provisions of this Article. Approval of the site plan by the Commission shall be conditional upon approval of the amendment by the Council. The Council may approve the amendment. If the Council chooses to approve the amendment, approval shall be conditional upon

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development of the use or uses shown on the approved site plan within the period of time stated in the schedule of development. If, at the expiration of this period, the property has not been improved for the use for which it was conditionally approved, it shall revert to its former classification without additional Council action.